

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

STANLEY J. KRANTMAN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:05CV1393 CDP
)	
WEST AMERICAN INSURANCE CO.,)	
)	
Defendant.)	


MEMORANDUM AND ORDER

Plaintiff Stanley Krantman brings this suit seeking to recover damages under an automobile liability policy issued by defendant West American Insurance Company. Defendant has moved to dismiss plaintiff's vexatious refusal to pay claim, for failure to state a claim. However, since the filing of defendant's motion to dismiss, plaintiff has filed a motion for leave seeking permission to file a second amended complaint. Because the federal rules state that leave shall be freely given for the amendment of pleadings and defendant has filed no objection, I will grant plaintiff's motion. I conclude that plaintiff's Second Amended Complaint cures any insufficiency in pleading as to his vexatious refusal claim that may have existed in earlier complaints. As a result, I find plaintiff has adequately pleaded his vexatious refusal claim, and so I will deny defendant's motion.

According to Missouri Revised Statutes, a court or jury can award additional damages when an insurance company's refusal to pay a loss was "without reasonable cause or excuse." Mo. Rev. Stat. § 375.420 (1994). Krantman asserts in his Second Amended Complaint that West American's refusal to pay met this standard of "without reasonable cause or excuse." Krantman's pleading of lack of reasonableness is sufficient, and I cannot determine that West American's behavior was reasonable as a matter of law. Assuming Krantman's factual allegations are true, the claim of vexatious refusal to pay is sufficient to withstand a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Accordingly,

IT IS HEREBY ORDERED that the plaintiff's motion for leave to file Second Amended Complaint [#23] is granted.

IT IS FURTHER ORDERED that defendant's motion to dismiss for failure to state a claim upon which relief can be granted [#19] is denied.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 7th day of February, 2006.